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4   UNITED STATES DISTRICT COURT

5   NORTHERN DISTRICT OF CALIFORNIA

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7   RICHARD KADREY, et al.,   Case No. 23-cv-03417-VC   (TSH)

8   Plaintiffs,

9   v.   **DISCOVERY ORDER**

10   META PLATFORMS, INC.,   Re: Dkt. No. 81

11   Defendant.

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13   The parties have a discovery dispute concerning a proposed protective order. ECF No. 81.

14   Three issues divide them.

15   First, the Court agrees with Plaintiffs that getting the Designating Party's consent to show

16   a "Confidential" document to a witness in a deposition is an unreasonable burden. In the Court's

17   experience, litigants often designate every non-public document as "Confidential," and anything

18   potentially sensitive as "Highly Confidential – Attorneys' Eyes Only." The Court is not saying

19   that is the proper or correct way to proceed, merely that it appears to be common. As a result, the

20   "Confidential" designation tends to sweep in a lot of documents for no better reason than that they

21   are non-public, such as emails, and it doesn't make sense to treat this category of confidentiality as

22   if it concerned very sensitive information. Here, the Plaintiffs' proposed order already says that

23   witnesses can be shown "Confidential" information only during their deposition, the disclosure

24   has to be reasonably necessary, and the witness has to sign the "Acknowledgment and Agreement

25   to be Bound" unless otherwise agreed by the Designating Party or ordered by the Court. That is

26   sufficient protection. The Court is also concerned that Meta's proposal would make deposition

27   preparation unnecessarily difficult for Plaintiffs.

28   For similar reasons, the Court rejects Meta's proposal that Protected Material should not be

United States District Court
Northern District of California

United States District Court
Northern District of California

1   able to leave the United States. The Court would potentially be amenable to a geographic

2   restriction that was tied to some narrowly defined class of documents or information that

3   presented genuine security risks. But Meta wants to impose the geographic restriction on every

4   single document that has the lowest level of confidentiality, which is unreasonable.

5   Third, Meta proposes to limit Plaintiffs to five paper copies of source code with no ability

6   to make additional copies; instead, Plaintiffs would have to ask Meta to make additional copies.

7   This restriction is unnecessary given the other protections for source code in the Plaintiffs'

8   proposed order, such as that the Receiving Party must maintain a record of any individual who has

9   inspected the source code, and all paper copies of source code have to be maintained in a secured,

10   locked area. The Court is also concerned that Meta's proposal could effectively involve Meta in

11   Plaintiffs' work with their experts, which is invasive of work product.

12   Accordingly, the Court adopts Plaintiffs' proposed protective order. If, with this guidance,

13   the parties are now able to stipulate to the entry of a protective order, they should do so. If not,

14   then Plaintiffs shall submit their proposed form of order as a proposed order, removing any

15   signature blocks and references to it being a stipulation. Either way, it should be set up for the

16   undersigned's signature.

17   **IT IS SO ORDERED.**

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19   Dated: January 22, 2024

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     THOMAS S. HIXSON
21   United States Magistrate Judge

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